

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

-----oo0oo-----

LINDA BEEMAN,

Plaintiff,

v.

JOHN CRUZ and J. CARDOZA,
individually and as employees of
the AMADOR COUNTY SHERIFF'S
DEPARTMENT; COUNTY OF AMADOR;
and DOES 1 through 50,
inclusive,

Defendants.

No. 2:21-cv-01774 WBS DB

ORDER RE: MOTION TO DISMISS
FIRST AMENDED COMPLAINT

-----oo0oo-----

This matter is back before the court on defendants' motion to dismiss plaintiff's First Amended Complaint. Whereas in the original Complaint plaintiff alleged violations of her Fourth, Fifth, and Fourteenth Amendment rights, in the First Amended Complaint she alleges only violations of her Fourth Amendment rights and right to "due process". (First Amended Complaint ("FAC") at ¶¶ 30-31 (Docket No. 12).)

1 II. Discussion

2 A. Municipal Liability

3 The First Amended Complaint names Amador County as a
4 defendant but appears to assert no claim for municipal liability.
5 (See id.) In her opposition, plaintiff indicates that she does
6 not seek to establish municipal liability against the County but
7 rather seeks to establish supervisory liability against Cardoza.
8 (Opp. at 8-9 (Docket No. 15).) The court will therefore grant
9 defendants' motion to dismiss as to the County.

10 B. Unreasonable Execution of Warrant

11 In its previous Order, the court evaluated whether
12 plaintiff's complaint stated a claim for unreasonable execution
13 of warrant, based on allegations detailing damage to plaintiff's
14 property incurred during execution of two warrants at her home.
15 (See Order at 5-7 (Docket No. 9).) The court held that this
16 claim was fatally defective because, although the original
17 complaint described the damage done to plaintiff's property, it
18 did not allege which officers caused that damage. (Id. at 6-7
19 (citing Hydrick v. Hunter, 669 F.3d 937, 942 (9th Cir. 2012)).)
20 However, at oral argument addressing the current motion, counsel
21 for plaintiff appeared to suggest that he did not believe such a
22 claim had merit and thus did not in fact intend to pursue it in
23 the First Amended Complaint.

24 Moreover, the only new and relevant allegation in
25 plaintiff's First Amended Complaint is that "Cruz had secured the
26 warrant and was in charge of the execution of the warrant." (FAC
27 at ¶ 11.) It does not allege that Cruz, or any other
28 individual(s), personally caused the damage. (See id.) Although

1 plaintiff argues that Cruz was "the lead officer on execution of
 2 the warrant," (Opp. at 11 (capital typeface omitted)), Cruz's
 3 mere presence during the warrant execution is insufficient, as
 4 there is no vicarious liability under § 1983. See Ashcroft v.
 5 Iqbal, 556 U.S. 662, 676 (2009) ("Because vicarious liability is
 6 inapplicable to . . . § 1983 suits, a plaintiff must plead that
 7 each [] official defendant, through the official's own individual
 8 actions, has violated the Constitution."). Because personal
 9 participation must be alleged to state a claim under § 1983, see
 10 id.; Hydrick, 669 F.3d at 942, plaintiff's unreasonable execution
 11 claim must be dismissed.¹

12 C. Malicious Prosecution

13 Plaintiff asserts a claim based on the filing of
 14 charges against her, prompted by defendants, which caused her to
 15 spend 13 days in jail. (FAC at ¶¶ 15-18.) In its previous
 16 Order, the court dismissed plaintiff's malicious prosecution
 17 claim on the ground that she failed to allege facts indicating
 18 that defendants overrode the judgment of the District Attorney,
 19 who under Ninth Circuit law is presumed to have independently
 20 determined the existence of probable cause. (Order at 7-8
 21 (quoting Smiddy v. Varney, 803 F.2d 1469, 1471 (9th Cir. 1986);
 22

23 ¹ In her opposition, plaintiff challenges the notion that
 24 she must, at the pleading stage, present "evidence of who did
 25 what damage." (See Opp. at 11.) Indeed, plaintiff is not
 26 required to prove the truth of her claims at this stage; rather,
 27 to survive a motion to dismiss, she need only provide allegations
 28 of fact that, if true, would demonstrate the merit of her claims.
See Navarro, 250 F.3d at 732; Moss v. U.S. Secret Serv., 572 F.3d
 962, 969 (9th Cir. 2009). To do so, she is required to allege
 which individual defendants caused the damage she challenges.
 She has not done so here.

1 Beck v. City of Upland, 527 F.3d 853, 862-63 (9th Cir. 2008)).)

2 The court noted that this presumption may be rebutted in

3 circumstances where, inter alia, "the prosecutor . . . was given

4 false information" or "the officers otherwise engaged in wrongful

5 or bad faith conduct that was actively instrumental in causing

6 the initiation of legal proceedings." (Id. at 8 (quoting Beck,

7 527 F.3d at 862-63) (internal quotation marks omitted).)

8 In the First Amended Complaint, plaintiff alleges that

9 Cruz omitted from his report information suggesting she had

10 innocent intentions in wiring money to her son. (FAC at ¶ 16.)²

11 She alleges that Cruz presented "false evidence" to the District

12 Attorney, obscuring this information, leading to the decision to

13 charge her. (Id. at ¶ 21; see Opp. at 14, 18.)

14 Even assuming that these allegations standing alone

15 might be sufficient to rebut the presumption of prosecutorial

16 independence, plaintiff's claim cannot succeed because, as the

17 court previously noted, plaintiff and defendants have both

18 acknowledged that, at a May 10, 2021 preliminary hearing, the

19 magistrate was told about Anthony Adams' statement to Cruz and

20 nevertheless ordered plaintiff held over for trial. (Order at

21 8.) Therefore, omission of this information cannot have caused

22 plaintiff to be improperly incarcerated for 13 days, as that

23

24 ² Specifically, plaintiff alleges that she wired \$200 to

25 her son, Jerry Adams, to enable him to return to Jackson,

26 California, to turn himself in to authorities. (FAC at ¶¶ 15-

27 16.) She alleges that in a report submitted to the District

28 Attorney, however, Cruz erroneously stated that she had sent

Adams the money to help Adams avoid apprehension, and that Cruz

failed to rectify this error after being informed of plaintiff's

true intentions. (Id. at ¶¶ 13, 15.)

1 information was in fact before the state court when the
2 magistrate ordered plaintiff's incarceration. See Johnson v.
3 Duffy, 588 F.2d 740, 743 (9th Cir. 1978) (§ 1983 liability
4 requires causal link between defendant's conduct and alleged
5 violation of plaintiff's constitutional rights).³ Because
6 plaintiff cannot show Cruz caused her to suffer a constitutional
7 violation, her malicious prosecution claim must be dismissed.⁴

8 D. Supervisory Liability

9 Plaintiff also seeks to establish that Cardoza is
10 liable as a supervisor for his role in the alleged violations of
11 her constitutional rights. (FAC at ¶¶ 11, 15, 17, 23.) "A
12 supervisory official is liable under § 1983 so long as 'there
13 exists either (1) his or her personal involvement in the
14 constitutional deprivation, or (2) a sufficient causal connection
15 between the supervisor's wrongful conduct and the constitutional
16 violation.'" Rodriguez v. Cnty. of Los Angeles, 891 F.3d 776,
17 798 (9th Cir. 2018) (quoting Keates v. Koile, 883 F.3d 1228,
18 1242-43 (9th Cir. 2018)). The existence of an underlying
19 constitutional violation is thus a necessary predicate to a
20 finding of supervisory liability. See id. As explained,

21
22 ³ Plaintiff argues that the magistrate's probable cause
23 determination at the May 10 preliminary hearing was negated when
24 the charges against her were dismissed during a subsequent
25 hearing on June 18, 2021. (See Opp. at 14-17.) Even assuming
26 this is correct, however, it does not explain how Cruz's conduct
could have caused plaintiff to be incarcerated during the
intervening period -- notwithstanding the magistrate's awareness
of Anthony Adams' statement to Cruz -- as explained above.

27 ⁴ Because the court concludes plaintiff's allegations
28 fail to demonstrate causation, it does not reach the parties'
arguments regarding issue preclusion.


1 however, the First Amended Complaint fails to state a claim
 2 either for unreasonable execution of warrant or for malicious
 3 prosecution. It thus also necessarily fails to state a claim for
 4 supervisory liability, which must therefore be dismissed.

5 E. Due Process

6 Finally, the First Amended Complaint includes a lone
 7 allegation that defendants deprived plaintiff of her right to
 8 "due process." (FAC at ¶ 30.) It does not elaborate on how
 9 defendants' actions deprived her of due process, however. Nor
 10 does plaintiff explain this claim in her opposition, to the
 11 extent that she means for it to be distinct from the claims
 12 discussed above, (see Opp.), and counsel for plaintiff did not
 13 address it at oral argument. Because the court is unable to
 14 otherwise identify a basis for this claim, it will be dismissed.
 15 See Navarro v. Block, 250 F.3d 729, 732 (9th Cir. 2001).

16 IT IS THEREFORE ORDERED that defendants' motion to
 17 dismiss plaintiff's First Amended Complaint (Docket No. 13-1) be,
 18 and the same hereby is, GRANTED.⁵

19 Dated: April 11, 2022


 WILLIAM B. SHUBB
 UNITED STATES DISTRICT JUDGE

21
 22 ⁵ At oral argument, the parties agreed that, at the May
 23 2021 hearing, the magistrate was aware Cruz had been told that
 24 plaintiff's intentions were innocent when wiring \$200 to her son,
 25 and that the magistrate nonetheless ordered plaintiff to be held
 26 over for trial. Because, as explained above, the magistrate's
 27 informed decision precludes liability for malicious prosecution
 28 against the initiating officers, the court concludes that this
 claim "could not be saved by any amendment." In re Daou Sys.,
Inc., 411 F.3d 1006, 1013 (9th Cir. 2005). Because the claim for
 supervisory liability is derivative of the malicious prosecution
 claim, the same is true for it as well. Accordingly, the court
 will not grant further leave to amend. See id.